Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

No.

IN THE

Supreme Court of the United States

FRANK MANISCALCO

Petitioners,

vs.

ROY HARRINGTON, MYRTIE HARRINGTON

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF FLORIDA

PETITION FOR A WRIT OF CERTIORARI

FRANK MANISCALCO
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21 pp

QUESTION PRESENTED

The 4th Ammendment of the U.S. Constitution along with Article 1, Section 9 and Section 12 of the Constitution of the state of Florida govern searches and seizures.

1. How have respondents managed to avoid the following of these constitutional provisions that are clear and to the point on seizures.

2. Why would respondents attorney file an answer/ counter claim with the Circuit Court 13 days after denial was ruled?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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Petitioner respectfully prays that a write of certiorari issue to review the judgement and opinion of the Supreme Court Of Florida entered on January 13, 2000 to address the important question of petitioners right to replevin personal property wrongfully seized without a written court order conflicting with both the United States Constitution and the Florida State Constitution and other pleadings entered in this case.

OPINIONS BELOW

The opinion of the Supreme Court Of Florida that gives rise to this petition is unpublished. It is reprinted in Appendix A hereto [App. A] at page 1a.

The opinion Of The Second District Court Of Appeals is unpublished. It is reprinted in Appendix B hereto [App. B.] at page 4a.

The opinion of the Circuit Court Of The Sixth Judical Circuit Of The State Of Florida in and For Pasco County is reprinted in Appendix C. here to [App.C] at page 5a.

STATEMENT OF JURISDICTION

On December 10, 1997 the Circuit Court Of The Sixth Judicial Circuit Of Florida in Pasco County by the Honorable Wayne L. Cobb denied a Complaint For Replevin 13 days before respondents filed an answer and counterclaim.

Review was sought in The Second District Court of Appeal which upheld the Decision April 28, 1999.

On January 13, 2000 The Supreme Court of Florida denied Petition for Review with notice that no motion for rehearing will be entertained.

All denials are contrary to the 4th Ammendment of the bill of rig hts of the U.S. Constitution and Florida Constitution seizure without a court order. Florida statutes and the single case listed Fuentes vs. Shevin a decision of the United States Supreme Court.

CITED AUTHORITIES

Fuentes v. Shevin, 407 U.S. 67,92 S.CT.1983,32 L.Ed 556 (1972) on Attachment Bars Prejudgement Seizure of Tangible Personal Property Under Process Without Notice and an Opportunity to be Heard.

STATUTES INVOLVED

Before 1967, distress was a summary procedure that was begun by affidavit and the issuance of a distress warrant. Since that time, it is an ordinary civil action begun by the filing of a complaint and the issuance of a distress writ. Except as noted in the succeeding paragraphs, the usual rules of pleading and practice apply to distress. With the passage of the Residential Landlord and Tenant Act of 1973, the new landlords' lien provision is enforced throught summary proceedings under *F.S.* Chapter 51 on residential tenants. Distress also may feel the effect of *Fuentes v. Shevin,* 407 U.S. 67, 92 S.Ct. 1983, 32 L.Ed.2d 556 (1972). If it ultimately stands for the principle that no prejudgement seizure of property is valid without a hearing, distress no longer will be an effective remedy. See *F.S.* 85.011(s)(a)&(b).

Property Subject To Distraint

F.S. 85.011

(5) SUMMARY ACTION

(a) By a person claiming a lien for labor performed, or claiming a landlord's lien under s. 713.691, filing in the court having jurisdiction of the amount of the lien claimed, a complaint describing the property on which a lien is claimed and stating the facts which authorize or create the lien. Such person is entitled to the summary procedure under s. 51.011.

(b) If the issues are found for plaintiff, judgement shall be entered for the amount to be due him or her with 15 percent attorney's fee and costs. The judgment is a prior lien on the property described in the petition over all other liens accruing or that may be filed subsequent to the day the lien for such labor performed or unpaid rent accrued, but if such issues are found for defendant, judgment shall be entered dismissing the action.

F.S. 933.04 Affidavits – The right of the people to be secure in their persons, houses, papers and effects against unreasonable seizures and searches shall not be violated and no search warrant shall be issued except upon probable cause, supported by oath or affirmation particularly describing the place to be searched and the person and thing to be seized. History. –s.2, ch.9321, 1923, CGL 8504.

76.13 Writ; form.–

(1) GENERALLY.–The writ of attachment shall command the sheriff to attach and take into custody so much of the

lands, tenements, goods, and chattels of the party against whose property the writ is issued as is sufficient to satisfy the debt demanded with costs.

Writ was not obtained and over $32,000 of personal property was seized to satisfy a $300.00 debt that did not really exist due to respondents dead tree demolishing petitioners $950.00 camper giving him more right to withold respondents $300 rent than respondent had to withold all of petitioners property after he sent a certified return receipt letter.

78.01 Right of replevin.–Any person whose personal property is wrongfully detained by any other person or officer may have a writ of replevin to recover said personal property and any damages sustained by reason of the wrongful taking or detention as herein provided. Notice of lis pendens to charge third persons with knowledge of plaintiff's claim on the property may be recorded.

History.–s. 1, Mar. 11, 1845; RS 1707; GS 2171; RGS 3476; CGL 5329; s. 1, ch. 28277, 1953; s. 1, ch. 29706, 1955; s. 28, ch. 67-254; s. 1, ch. 73-20.

Taking without the issuance of a writ constitutes wrongful detention of property.

CONSTITUTIONAL PROVISIONS AMENDMENT 4. UNREASONABLE SEARCHES AND SEIZURES U.S. CONSTITUTION

The right of the people to be secure (safe) from unreasonable searches or seizures (arrests or taking of belongings) of themselves, their houses, their papers and effects (other personal property) cannot be violated. Warrants (written court orders) for any of these purposes must be issued with good cause, sworn to by an oath, and must describe, in detail, the place to be searched and the persons or things to be seized. This protects persons from "writs of assistance" (general warrants allowing any search or seizure anytime anyplace) such as were used by the British.

CONSTITUTION OF THE STATE OF FLORIDA

Article I

SECTION 9. Due Process.–No person shall be deprived of life, liberty or property without due process of law, or be twice put in jeopardy for the same offense, or be compelled in any criminal matter to be a witness against oneself.

History.–Am. proposed by Constitution Revision Commission, Revision No. 13, 1998, filed with the Secretary of State May 5, 1998; adopted 1998.

SECTION 12. Searches and seizures.–The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, and against the unreasonable interception of private communications by any means, shall not be violated. No

warrant shall be issued except upon probable cause, supported by affidavit, particularly describing the place or places to be searched, the person or persons, thing or things to be seized.

STATEMENT OF THE CASE

On or about July 20, 1997 a large dead oak tree in Respondents pasture fell on and destroyed petitioners camper and restitution was denied.

Respondents were sent a certified return receipt letter September 29, 1997 they will pay for camper or rent will be witheld until camper was paid out. Upon receipt eviction proceedings were started.

On November 20, 1997 petitioner was removed off the property by a sheriffs' trespassing warning without removing his personal property or allowing him to remove it withholding same without a distress writ or a writ of attachment witholding over $32,000 of property for $300 rent.

On December 1, 1997 Petitioner filed his replevin complaint which was denied December 10, 1997 without respondents filing an answer until December 23, 1997 for a decision on an unopposed complaint that was never called up for a hearing. Answer/counterclaim were not timely filed until 13 days after judge Cobb denied Replevin complaint and 23 days after complaint was filed. Time is 20 days for timely filing..

REASONS FOR GRANTIN PETITION

Petitioners' rights to the Fourth Ammendment of the U.S. Constitution and Article 1 Sections 9 and 12 have been violated of the Constitution of the State of Florida devaluating his privilege of being an American.

All 3 rulings conclude that anyone can take anyone elses' property at random and get away with it when personal property is taken November 20, 1997, Replevin Complaint filed December 1, 1997 and respondent file no answer and counterclaim until December 23, 1997 requesting a landlords lein to be established after appeal was filed.

Respondents hve submitted nothing to authorize this seizure in the order of Constitutional Provisions, case citations or Florida Statutes. If property is not returned on petitioners' pleading it should be returned because respondents had no authority to take it.

CONCLUSION

For the foregoing reasons, the petition for a wri of certiorari should be granted.

Respectfully submitted

Frank Maniscalco

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APPENDIX

APPENDIX A – OPINION OF THE SUPREME COURT OF FLORIDA DATED AND DECIDED JANUARY 13, 2000

THURSDAY, JANUARY 13, 2000

CASE NO. SC95955
Lower ribunal No.: 2D98-00071

FRANK MANISCALCO *vs.* ROY HARRINGTON, ET AL
Petitioner *Respondent*

This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Article V, Section 3(b), Florida Constitution, and the Court having determined that it should decline to accept jurisdiction, it is ordered that the Petition for Review is denied.

No Motion for Rehearing will be entertainment by the Court. See Fla. R. App.

A True Copy
Test:

Debbie Causseaux
Acting Clerk, Supreme Court

Served: Frank Maniscalco

Thomas P. Mcalvanah, Hon. Wayne L. Cobb, Judge
Hon. James Birkhold, Clerk, Hon. Jed Pittman, Clerk

bh

Eg. APPENDIX A1

CONSTITUTION OF THE STATE OF FLORIDA

SECTION 3. Supreme Court.–

(b) JURISDICTION.–The supreme court:

(1) Shall hear appeals from final judgments of trial courts imposing the death penalty and from decisions of district courts of appeal declaring invalid a state statute or a provision of the state constitution.

(2) When provided by general law, shall hear appeals from final judgments entered in proceedings for the validation of bonds or certificates of indebtedness and shall review action of statewide agencies relating to rates or service of utilities providing electric, gas, or telephone service.

(3) May review any decision of a district court of appeal that expressly declares valid a state statute, or that expressly construes a provision of the state or federal constitution, or that expressly affects a class of constitutional or state officers, or that expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law.

(4) May review any decision of a district court of appeal that passes upon a question certified by it to be of great public importance, or that is certified by it to be in direct conflict with a decision of another district court of appeal.

(5) May review any order or judgment of a trialo court certified by the district court of appeal in which an appeal is pending to be a great public importance, or to have a great effect on the proper administration of justice throughout

the state, and certified to require immediate resolution by the supreme court.

(6) May review a question of law certified by the Supreme Court of the United States or a United States Court of Appeals which is determinative of the cause and for which there is no controlling precedent of the supreme court of Florida.

APPENDIX B – OPINION OF THE SECOND DISTRICT COURT OF APPEALS OF FLORIDA DATED APRIL 28, 1999

NOT FINAL UNTIL TIME EXPIRES TO THE FILE REHEARING MOTIONA ND, IF FILED, DETERMINED.

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

FRANK MANISCALCO,
Appellant,

v. CASE NO. 98-00071

ROY HARRINGTON and MYRTIE HARRINGTON,
Appellees.

Opinion filed April 28, 1999.

Appeal from the Circuit Court for Pasco County;
Wayne L. Cobb, Judge

Frank Maniscalco, pro se.

No appearance for Appellees.

PER CURIAM.

Frank Maniscalco timely appeals the order denying his complaint for replevin. We have carefully examined the file and find no reversible error.

Affirmed.

Eg. APPENDIX B

ALTENBERND, A.C.J., and GREEN and SALCINES, JJ., Concur.

IN THE SECOND DISTRICT COURT OF APPEAL,
LAKELAND, FLORIDA

JUNE 1, 1999

FRANK MANISCALCO,
Appellant (s),

v. CASE NO. 98-00071

ROY HARRINGTON and
MYRTIE HARRINGTON,
Appellee (s).

BY ORDER OF THE COURT:

Appellant, pro se, having filing a motion for rehearing inthe above-styled case, upon consideration, it is

ORDERED that the motion for rehearing is hereby denied.

I HEREBY CERTIFY THE FOREGOING IS A \
TRUE COPY OF THE ORIGINAL COURT ORDER.

JAMES BIRKHOLD, CLERK

c: Frank Maniscalco
Thomas P. McAlvanah, Esq.

/BL

APPENDIX C – OPINION AND ORDER OF THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA ORDERED DECEMBER 10, 1997

IN THE CIRCUIT COURT OF THE SIXTH JUDICAL CIRCUIT OF THE STATE OF FLORIDA IN AND FOR PASCO COUNTY

Case No. 97-6532CA
Division Y

FRANK MANISCALCO,

Plaintiff,

vs.

ROY HARINGTON and
MYRTIE HARRINGTON,

Defendants.

ORDER DENYING COMPLAINT FOR REPLEVIN

This matter came before the Court upon the Plaintiff's Replevin Complaint and after having duly considered same the court finds that the Plaintiff has not demonstrated that he is entitled to immediate possession of the property, it is, hereby

ORDERED that said complaint is hereby denied.

DONE and ORDERED in Chambers, Dade City, Pasco County, Florida, this _____ day of December, 1997

Wayne L. Cobb, Circuit Judge

Copy to: Mr. Frank Maniscalco

Eg. APPENDIX C

BEST AVAILA

WHEREFORE, the Defendants/Counter-Plaintiffs prays that after hearing this honorable court will:

1. Establish the Defendants'/Counter-Plaintiffs' right to a landlord's lien.
2. Establish the Defendants'/Counter-Plaintiffs' right to a lien for care and maintenance of animals.
3. Determine the amounts of the landlord's lien and lien for care and maintenance of animals.
4. Order that said liens be paid by the Plaintiff/Counter-Defendant, and upon failure to do so, the property judgement if the proceeds of such sale are insufficient to pay the liens referenced herein.

DATED this 23rd of day December, A.D., 1997.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by regular U.S. Mail on this 23rd day of December, A.D., 1997, to: FRANK MANISCALCO, P.O. Box 958, Crystal Springs, Florida 33524.

THOMAS P. McALVANAH, ESQUIRE
Thomas P. McAlvanah, P.A.
37818 Hwy. 54 West
Zephyrhills, Florida 33541
(813) 782-2002
Florida Bar No.: 215899
Attorney for Defendants/Counter-Plaintiffs

LABLE COPY

No.

IN THE

Supreme Court of the United States

FRANK MANISCALCO

Petitioners,

vs.

ROY HARRINGTON, MYRTIE HARRINGTON

Respondents.

PROOF OF SERVICE

I, FRANK MANISCALCO, do swear or declare that on this date, June 15, 2000, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED IN A PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, 3 copies each in an envelope containing the above documents addressed to each of them by hand delivery.

The names and addresses of those served are as follows:

ROY HARRINGTON, 39451 Tucker Rd.,
Zephryhills, FL 33541
MYRTIE HARRINGTON, 39451 Tucker Rd.,
Zephryhills, FL 33541,
Phone: (813) 782-1177

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 15 2000